

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of----- )  
 )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 2006-0498  
 )  
Instituting a Proceeding to )  
Investigate the Proposed Tariffs )  
Filed by Kauai Island Utility )  
Cooperative and Other Related )  
Matters. )  
\_\_\_\_\_ )

ORDER DENYING MOTIONS FOR RECONSIDERATION  
OF THE DECISION AND ORDER, FILED ON JUNE 24, 2008

RECEIVED

2008 OCT -8 A 8:55

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

2008 OCT -7 P 1:05

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

|                                  |   |                      |
|----------------------------------|---|----------------------|
| -----In the Matter of-----       | ) |                      |
|                                  | ) |                      |
| PUBLIC UTILITIES COMMISSION      | ) | Docket No. 2006-0498 |
|                                  | ) |                      |
| Instituting a Proceeding to      | ) |                      |
| Investigate the Proposed Tariffs | ) |                      |
| Filed by Kauai Island Utility    | ) |                      |
| Cooperative and Other Related    | ) |                      |
| Matters.                         | ) |                      |
| _____                            | ) |                      |

ORDER DENYING MOTIONS FOR RECONSIDERATION  
OF THE DECISION AND ORDER, FILED ON JUNE 24, 2008

By this Order, the commission denies the two motions for reconsideration filed on July 3, 2008, which sought the reconsideration of the commission's Decision and Order, issued on June 24, 2008.<sup>1</sup>

I.

Background

On April 14, 2008, the Parties filed their Supplemental Stipulation with the commission.<sup>2</sup> On June 24, 2008,

---

<sup>1</sup>The Parties in this proceeding are: (1) KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"); (2) HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"); (3) the COUNTY OF KAUAI; (4) CHAPEAU, INC., dba BLUEPOINT ENERGY, STARWOOD HOTELS AND RESORTS WORLDWIDE, INC., and the HAWAII HEALTH SYSTEMS CORPORATION (collectively, the "BluePoint Energy Intervenors"); (5) MARRIOTT HOTELS SERVICES, INC., on behalf of KAUAI MARRIOTT RESORT & BEACH CLUB ("Kauai Marriott"); and (6) the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

<sup>2</sup>Supplemental Stipulation Requesting Approval of Parties' Revised Standby Proposal (Exhibit 1) in Lieu of Stipulation and

the commission approved in part and denied in part the Settlement Agreement, attached as Exhibit 1 to the Supplemental Stipulation.<sup>3</sup> As a result, the commission held that KIUC shall, until the conclusion of its next general rate case proceeding: (1) retain its monthly standby service charge of \$5.00 per kW of standby demand for non-renewable projects and facilities; and (2) remove its existing standby service charge for renewable energy systems and projects.

The commission, in rejecting in part the Revised Standby Proposal, noted:

The commission, however, declines to adopt those portions of the Parties' agreement to maintain the existing rate until KIUC's next rate case or January 1, 2015 (whichever is later),<sup>4</sup>

---

Proposed Stipulated Procedural Order/Schedule Filed on November 30, 2007; Exhibit 1, Settlement Agreement (hereinafter referred to as the "Settlement Agreement" or "Revised Standby Proposal"); and Certificate of Service, filed on April 14, 2008 (collectively, "Supplemental Stipulation"). Throughout the Supplemental Stipulation, the Parties utilize the term Revised Standby Proposal in referring to their Settlement Agreement, including requesting the commission's approval of the Revised Standby Proposal. Hence, the commission utilizes the terms Revised Standby Proposal and Settlement Agreement interchangeably in this Order.

<sup>3</sup>Decision and Order, filed on June 24, 2008.

<sup>4</sup>Footnote 27 of the commission's Decision and Order states:

KIUC believes that it is reasonable to assume that it may be filing an application for a general rate case during the later part of 2009, thereby utilizing a 2010 test year. Under this scenario, KIUC's rate case proceeding will, in all likelihood, be completed by 2011 or sooner. The commission, in effect, presumes that KIUC's rate case proceeding will be completed prior to 2015. Thus, pursuant to the Revised Standby Proposal, following the completion of KIUC's rate case proceeding, the monthly standby service charge of \$5.00 per kW for standby demand will remain in place for Qualified Facilities/Projects until January 1, 2015. Conversely, distributed generation facilities that do not meet the Qualified Facilities/Projects criteria will be subject to the new standby service charge that is

and to limit the rate to Qualified Projects/Facilities. According to the Parties, these agreements were "to address the need and desire for certainty raised by some of the parties and during the February 27, 2007 public hearing . . . . while at the same time providing a mechanism to limit or control the extent of KIUC's potential financial exposure."

However, in the commission's view, to hold the \$5.00 standby rate beyond KIUC's next rate case would be discriminatory. Such a disparity in treatment between Qualified Projects/Facilities and distributed generation facilities that do not meet the Qualified Projects/Facilities criteria appears to constitute "unreasonable discrimination between localities or between users or consumers under substantially similar conditions," which is prohibited by HRS § 269-16(b)(2)(B). In this regard, the commission rejects as unpersuasive KIUC's justification that only its two existing standby service customers and the intervenors to this proceeding should retain the benefit of the \$5.00 monthly charge until January 1, 2015, in order to provide a greater degree of certainty to them.

Moreover, the commission finds that the Parties' selection of the January 1, 2015 date is arbitrary and unsupported. There does not appear to be anything in the record to support the January 1, 2015 date chosen by the Parties. In the commission's distributed generation proceeding, Docket No. 03-0371, the commission stated that "[t]he policy of the commission is to promote the development of a market structure that assures: (a) distributed generation is available at the lowest feasible cost; (b) distributed generation that is economical and reliable has an opportunity to come to fruition; and (c) distributed generation that is not cost-effective does not enter the system." To move toward this articulated policy, the standby rate approved by the commission in this docket must be temporary. Indeed, the commission notes that the Parties' agreement with respect to the standby rate for renewable energy systems and projects (Component 2) only applies until the completion of KIUC's next rate case proceeding. As such, the commission sees no reason to extend the \$5.00 standby rate for non-renewable projects or facilities beyond the next rate case when the

---

established and approved by the commission as part of KIUC's rate case proceeding.

standby rates for renewable projects will be reevaluated in the next rate case, and indeed standby rates in general will be evaluated.

. . . . .

Based on the foregoing reasons, the commission approves in part and denies in part the Revised Standby Proposal. In particular:

1. KIUC's monthly standby service charge of \$5.00 per kW for standby demand will remain in place for all distributed generation customer facilities (excluding renewable energy systems and projects, which are exempt from the \$5.00 monthly charge) until the completion of KIUC's general rate case proceeding. Following the completion of KIUC's general rate case, the new standby service charge that is established and approved by the commission will apply.

2. Given that the \$5.00 monthly charge will apply to all distributed generation customer facilities (excluding renewable energy systems and projects, that are exempt from the \$5.00 monthly charge) until the completion of KIUC's general rate case proceeding, regardless of whether the facilities meet or do not meet the Qualified Projects/Facilities criteria, the 5 MW cap governing Qualified Projects/Facilities and the related procedures thereto are unnecessary.

3. In effect, until KIUC's forthcoming general rate case proceeding is completed by the commission, at which time a new standby service charge will be established and approved by the commission, the commission hereby approves: (A) the retention of KIUC's \$5.00 monthly charge for non-renewable projects or facilities; and (B) the exemption of renewable energy systems and projects from the \$5.00 monthly charge.

4. The commission, in KIUC's general rate case proceeding, intends to review whether the exemption for renewable energy systems and projects should be discontinued, continued for a specific duration, or adopted on a permanent basis.

Decision and Order, at 23 - 27 (footnotes 28, 29, and 30, text, and citations therein omitted).

On July 3, 2008, two motions were filed seeking the reconsideration and stay of the commission's Decision and Order, by Kauai Marriott<sup>5</sup> and the BluePoint Energy Intervenors,<sup>6</sup> respectively. In addition, Kauai Marriott and the BluePoint Energy Intervenors requested oral argument on their respective motions. On July 9, 2008, KIUC filed its revised tariff sheets for its standby service tariff, in compliance with the commission's Decision and Order. On July 10, 2008, the BluePoint Energy Intervenors filed their Joinder in the Kauai Marriott's Motion for Reconsideration. On July 18, 2008, the commission issued its Order Denying [the] Motions to Stay the Decision and Order Filed on June 24, 2008, and Scheduling a Hearing on the Motions for Reconsideration.<sup>7</sup> Responses to the motions for reconsideration were filed by the Consumer Advocate and HREA on July 15 and 18, 2008, respectively. No other responses were filed.

A hearing on the motions for reconsideration was held as scheduled on August 20, 2008, at the commission's hearing room

---

<sup>5</sup>Kauai Marriott's Motion for Reconsideration and Modification, Suspension, or Vacation of Decision and Order, Memorandum in Support Thereof, Request for Oral Argument, Motion for Stay; and Certificate of Service, filed on July 3, 2008 (collectively, "Kauai Marriott's Motion for Reconsideration").

<sup>6</sup>Motion for Reconsideration and Request for Oral Argument; and Certificate of Service, filed on July 3, 2008 (collectively, "BluePoint Energy Intervenors' Motion for Reconsideration").

<sup>7</sup>By this Order, the commission incorporated the deadline date of July 18, 2008 for the filing of any replies to the motions for reconsideration. See Commission's correspondence, dated July 11, 2008.

in Honolulu.<sup>8</sup> Representatives from each of the Parties appeared and participated in the hearing.

A.

Kauai Marriott's Position

Kauai Marriott seeks the reconsideration of the commission's Decision and Order by requesting that the commission accept the Revised Standby Proposal without modification. In the alternative, Kauai Marriott seeks to vacate the commission's Decision and Order, pending further proceedings in this docket. In support of its position, Kauai Marriott asserts:

1. The benefits of installing distributed generation facilities, including combined heat and power ("CHP") systems, are significant and self-evident, and the development of distributed generation/CHP ("DG/CHP") should be encouraged for KIUC's system, and not discouraged.

2. The Revised Standby Proposal results from long, detailed, and sometimes acrimonious negotiations between the Parties. "KIUC agreed to provide 'Qualified Projects/Facilities' with a guarantee that the standby charge would be no more than \$5 per kW of standby demand through December 31, 2014. In return, the DG/CHP parties agreed to (1) limit the availability of the \$5 per kW charge to Qualified Projects/Facilities up to a total of 5 MW and (2) defer going to

---

<sup>8</sup>Transcript of the hearing on the motions for reconsideration, held on August 20, 2008 ("Transcript").

hearing on a standby charge methodology until KIUC's next general rate case."<sup>9</sup>

3. Kauai Marriott's primary reason for supporting the Revised Standby Proposal was the guarantee of certainty with respect to KIUC's standby demand charge for a reasonable period of time. In the absence of this guarantee, Kauai Marriott had no reason to agree to any of the other terms set forth in the Revised Standby Proposal. "Had the Commission simply allowed KIUC to withdraw its proposed rates and closed this docket, the Kauai Marriott would have been entitled to exactly the same result with respect to payment of the \$5 per kW standby demand charge: that charge would have remained in effect until the completion of the next general rate case and the Kauai Marriott would not have been required to agree to any further conditions with respect to standby service."<sup>10</sup>

In essence, the commission's Decision and Order leaves Kauai Marriott with all of the burdens of the settlement while depriving it of all of the benefits.

4. While the commission's concern over discriminatory treatment is understandable, there are sound legal and public policy reasons for the differing treatment between those entities that qualify as Qualified Projects/Facilities under the Revised Standby Proposal, and those that do not.

5. The differing treatment accorded these two groups of customers is justifiable and is not unreasonable discrimination, as the two groups are not operating under

---

<sup>9</sup>Kauai Marriott's Motion for Reconsideration, at 4.

<sup>10</sup>Kauai Marriott's Motion for Reconsideration, at 23.



substantially similar conditions. Of particular note, the ability of meeting the Qualified Project/Facility criteria is not limited to KIUC's two existing standby service customers and the Intervenor. Rather, any customer can qualify by meeting the 1,025 kW first-come, first-serve criteria set forth in the Revised Standby Proposal. Moreover, the 1,025 kW cap, if reached, is subject to modification or expansion.

"Thus, the distinction drawn in the Revised Standby Proposal is between those customers that have taken action and expended funds in pursuit of DG/CHP, and those that have done nothing and, thus, cannot be said to have relied upon the existing standby charge. This distinction is reasonable and provides a rational basis for the differing treatment accorded these two groups under the Revised Standby Proposal."<sup>11</sup>

"Taken as a whole, the facts and circumstances present with respect to the Revised Standby Proposal readily support a conclusion that any discrimination is not unreasonable discrimination under HRS 269-16(b)(2)(B)."<sup>12</sup>

6. Likewise, the distinction between customers which is drawn in the Revised Standby Proposal is compatible with the long-standing regulatory principle supporting the "grandfathering" of certain customers when there may be a significant change in tariff provisions. Thus, "where a customer has relied upon or taken an action in reliance upon an existing tariff, that customer can be 'grandfathered' to operate under that tariff even in circumstances where the Commission has

---

<sup>11</sup>Kauai Marriott's Motion for Reconsideration, at 13.

<sup>12</sup>Kauai Marriott's Motion for Reconsideration, at 18.

approved a change to that tariff. Similar logic can be applied with respect to the standby demand charges under the Revised Standby Proposal at issue here: those that acted in reliance upon the existing tariff are entitled, for a reasonable period of time, to protection from future changes in that tariff that may operate to their detriment."<sup>13</sup>

7. The operation of DG/CHP by major industrial, commercial, and other customers will assist in reducing peak demand, increase the reliability of KIUC's transmission and distribution systems for other customers, and potentially reduces the need for the construction of future generating facilities by KIUC. The Revised Standby Proposal also supports and encourages the use of alternative energy sources.

8. The commission's Decision and Order "appears to implicitly assume that any standby charge that will be approved in the next KIUC general rate case will be above \$5 per kW (otherwise, there is no reason not to extend the \$5 per kW through the January 1, 2015 date). However, it is likely that in those general rate case proceedings, certain parties will attempt to demonstrate that the standby charge should be lower or eliminated altogether. On the other hand, KIUC may again attempt to show that increases of 500% to 625% in the current standby charge are somehow reasonable. The unanimous agreement of the parties here to avoid litigation at this juncture by extending the \$5 per kW standby charge is certainly within the 'range of

---

<sup>13</sup>Kauai Marriott's Motion for Reconsideration, at 19.

reasonableness' between these two potential litigation positions."<sup>14</sup>

9. The January 1, 2015 date represents a negotiated and reasonable compromise between the Parties with often differing viewpoints.

10. The Revised Standby Proposal relieves KIUC of the obligation of producing a cost of service study in this proceeding, and instead, allows KIUC to produce such a study in the context of a general rate case. However, the quid pro quo for releasing KIUC from its obligation to support new standby rates here was the agreement to extend, for a reasonable period of time, the \$5 per kW per month rate to the Parties that had relied upon that rate. Accordingly, "the January 1, 2015 date was a reasonable accommodation to DG/CHP customers in exchange for not requiring KIUC to expend the resources to support its new standby rates in this proceeding."<sup>15</sup>

11. Under the terms of the Supplemental Stipulation, Kauai Marriott can withdraw from the Supplemental Stipulation. Kauai Marriott is not exercising this right at this time, but reserves the right to do so once the commission has taken further or final action in this proceeding.

B.

The BluePoint Energy Intervenors' Position

The BluePoint Energy Intervenors "request that the Commission reconsider its Decision and Order and reinstate the

---

<sup>14</sup>Kauai Marriott's Motion for Reconsideration, at 20-21.

<sup>15</sup>Kauai Marriott's Motion for Reconsideration, at 21.

January 1, 2015 termination date for those who choose to design and install DG/CHP systems on the Island of Kauai."<sup>16</sup> In support of their position, the BluePoint Energy Intervenors contend:

1. During the period when KIUC's existing monthly standby service charge of \$5.00 per kW for standby demand has been in place, up until the filing of KIUC's proposed increases in the monthly standby service charge in November 2006, the BluePoint Energy Intervenors expended substantial time and money exploring the economic feasibility of installing CHP facilities at several locations on the island of Kauai. Once KIUC filed its proposed increases in November 2006, virtually all such development efforts by the BluePoint Energy Intervenors immediately ceased.

2. The Revised Standby Proposal results from numerous and lengthy negotiations between the Parties. An essential component in reaching a settlement was the concept of the "Coverage Period" ending on January 1, 2015, as set forth in the Revised Standby Proposal. Without the "\$5/kw/mo, 5MW, 1/1/2015" formula, there would have been no settlement agreement between the Parties.

3. A fixed standby rate for a fixed and substantial period of time provides certainty and is necessary for distributed generation/CHP to becoming a feasible option on the island of Kauai. "Only a set period of time would ensure the degree of certainty needed by developers and electric customers

---

<sup>16</sup>BluePoint Energy Intervenors' Motion for Reconsideration, at 12.

to go forward with the expense of contracting, designing, building and installing distributed generation facilities. The January 1, 2015 termination date was proposed by KIUC in the absence of KIUC's knowledge of when its next general rate increase application would be filed."<sup>17</sup> Specifically, "[b]efore a DG/CHP project can be designed and installed, a developer and KIUC's large customers must first determine if and how a CHP facility will realize a reduction in a KIUC customer's electric utility bill. Absent cost-based rates, there is no way to undertake meaningful analysis unless a fixed standby rate is prescribed for a significant period of time."<sup>18</sup> In essence, the elimination of the January 1, 2015 date will create the uncertainty that the commission seeks to prevent.

4. The "Qualified Project/Facility Criteria" set forth in the Revised Standby Proposal eliminates the perceived discriminatory effect on the "Coverage Period" agreed-upon by all of the Parties. In other words, "KIUC has documented 3,975 of KW for DG/CHP for which identified customers had invested planning and/or money for DG/CHP up to November, 2006, thereby creating a sub-class of customers that have a common characteristic. There may be others who did not intervene who remain unknown, who also spent money on assessing DG/CHP prior to November, 2006. For that group there is a 1,025 KW 'cushion' of available DG/CHP capacity, allowing them to enjoy the '\$5/kw/mo. 5MW, 1/1/2015' terms of the Settlement Agreement, but only if they can prove to

---

<sup>17</sup>BluePoint Energy Intervenors' Motion for Reconsideration, at 6-7.

<sup>18</sup>BluePoint Energy Intervenor's Motion for Reconsideration, at 7.

KIUC that they incurred DG/CHP related expenditures prior to November, 2006."<sup>19</sup> "The likelihood of more than 5MW of DG/CHP installed by January 1, 2015 is very remote."<sup>20</sup>

5. The potential for cross-subsidization is addressed in the Revised Standby Proposal, pursuant to which: (A) KIUC is free to attempt to recover funds forecasted to be un-recovered, on a going-forward basis; and (B) any party in that general rate case proceeding can take any position in support of or in opposition to KIUC's proposal at that time.

6. The January 1, 2015 termination date is reasonable, legally sustainable, equitable, and in the interest of the general public.

C.

Consumer Advocate's Reply

By letter dated July 15, 2008, the Consumer Advocate states its support for the motions for reconsideration and the Settlement Agreement. In this regard, the Consumer Advocate contends:

1. The commission's Decision and Order dramatically changed the basis terms of the Settlement Agreement and denied Kauai Marriott and the BluePoint Energy Intervenors the benefit they had sought in reaching a settlement with the other parties. In reaching agreement on the terms of the Settlement Agreement, "the Parties carefully considered the provisions that were

---

<sup>19</sup>BluePoint Energy Intervenors' Motion for Reconsideration, at 8-9.

<sup>20</sup>BluePoint Energy Intervenors' Motion for Reconsideration, at 11.

important to each, and the concessions that were being made to reach resolution of the differing interests of each Party."<sup>21</sup>

2. The agreement that allows Qualified Facilities to continue being assessed the \$5 per kW per month rate until December 31, 2014 is not discriminatory. Rather, it recognizes the need for certainty as to the rate that will possibly be charged for standby service if a customer elects to install a distributed generating facility on the customer's premises. As explained by the Consumer Advocate:

. . . the Settlement Agreement provided for DG facilities whose combined energy totaled 5,000 KW to be charged the existing standby rate until December 31, 2014. The 5,000 KW threshold includes not only 3,975 KW for the facilities planned by Kauai Marriott and [the] BluePoint Energy intervenors, but an additional 1,025 KW for other potential customers who are not parties to the instant docket but who could similarly demonstrate they were materially impacted by KIUC's November 27, 200[6] filing to qualify for the continued \$5 rate. In addition, if the 5,000 KW proved to be insufficient to cover these qualified facilities, the Settlement Agreement set[s] forth procedures whereby the 5,000 KW threshold could be increased. These provisions clearly demonstrate that the terms of the Settlement Agreement are not discriminatory, but were instead designed to address those customers who were not materially impacted by KIUC's November 26, 200[6] proposed tariff filing. Customers who were not materially impacted by KIUC's November 26, 200[6] filing and/or who were not considering future installation of DG facilities at or around that time are not in the same situation as the Kauai Marriott and BluePoint Energy intervenors. Instead, the Settlement Agreement clearly provides ample notice to these potential customers considering future installation of DG facilities of the possible range of rates that may be assessed, given KIUC's proposed standby rate reflected in the initial filing.

---

<sup>21</sup>Consumer Advocate's letter, dated July 15, 2008, at 2.

Consumer Advocate's letter, dated July 15, 2008, at 2-3 (boldface and emphasis in original).

3. Data to support a cost-based standby rate is simply not available at this time. Hence, the Settlement Agreement provides KIUC with sufficient time to gather the necessary data to develop cost-based rates, including proposed standby service charge, as part of its forthcoming general rate case proceeding.

For these reasons, the Consumer Advocate concludes by noting that "the terms of the Settlement Agreement is viewed by the Parties as being in the public's best interest."<sup>22</sup>

D.

HREA's Reply

By letter dated July 18, 2008, HREA states its support for the motions for reconsideration, the Settlement Agreement, and the Consumer Advocate's position. In lieu of reiterating the arguments set forth in the motions for reconsideration and the Consumer Advocate's letter, HREA maintains that the standby tariff framework that results from the commission's Decision and Order will not promote the installation and operation of distributed generation. "Specifically, without the certainty provided in the Settlement Agreement, we believe the economic viability of the planned projects is in jeopardy."<sup>23</sup>

---

<sup>22</sup>Consumer Advocate's letter, dated July 15, 2008, at 3.

<sup>23</sup>HREA's letter, dated July 18, 2008, at 2.



HREA concludes by requesting that the commission clarify certain aspects of the Settlement Agreement agreed-upon by the Parties.<sup>24</sup>

## II.

### Discussion

#### A.

#### Motions for Reconsideration

HAR § 6-61-137 states:

§6-61-137 Motion for reconsideration or rehearing. A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137.

During the course of the hearing on the motions for reconsideration, certain matters were clarified or confirmed by the Parties, including:

1. The 5 MW cap set forth in the Revised Standby Proposal is not based on a technical limitation. Instead, this cap represents an acceptable level of subsidization from KIUC's perspective.<sup>25</sup>

2. The in-service date for Kauai Marriott's CHP generators is on or about October 12, 2008.<sup>26</sup>

---

<sup>24</sup>See HREA's letter, dated July 18, 2008, at 2.

<sup>25</sup>See Transcript, at 20-21, 64-75, and 92-94.

<sup>26</sup>Transcript, at 6-7.

3. The January 1, 2015 end-date represents a date that was selected by the Parties as a compromise.<sup>27</sup>

4. While KIUC continues to support the Settlement Agreement, it does not object to the commission's Decision and Order in any way.<sup>28</sup>

Here, the commission reiterates that the disparate, discriminatory treatment between Qualified Projects/Facilities and distributed generation facilities that do not meet the Qualified Projects/Facilities criteria under the Settlement Agreement remains an underlying source of concern. In this regard, the commission rejects as unpersuasive the BluePoint Energy Intervenors' contention that any such potential discrimination, unless and until it occurs at some future date, is non-existent and speculative. Moreover, while the movants and other parties that submitted replies to the motions for reconsideration emphasize the certainty that the Settlement Agreement provides to persons interested in developing or installing distributed generation Qualified Facilities on the island of Kauai, the commission notes that the Settlement Agreement, if approved by the commission without change, will effectively sanction the disparate, discriminatory treatment objected to by the commission. Such as result, in the commission's view, appears inconsistent with the public interest. In this regard, the commission also reiterates its related concern that the Parties' selection of the January 1, 2015 date,

---

<sup>27</sup> See Transcript, at 57 and 105-109.

<sup>28</sup> Transcript, at 63 and 133.

as a whole, appears arbitrary and unsupported by the docket record.<sup>29</sup>

The commission concludes that the movants have not met their burden of establishing that the commission's Decision and Order is unreasonable, unlawful, or erroneous under HAR § 6-61-137. Accordingly, the commission denies the motions for reconsideration filed by the BluePoint Energy Intervenors and Kauai Marriott.

B.

Closing of the Docket

On July 27, 2007, the commission issued Decision and Order No. 23563, declining to adopt the federal interconnection standards for KIUC. On May 22, 2008, the commission issued Decision and Order No. 24238, approving, subject to certain modifications, the interconnection tariff proposed by KIUC and the other parties to this proceeding (except HREA), to govern the interconnection of distributed generating facilities operating in parallel with the electric utility's system.<sup>30</sup> On June 24, 2008, the commission issued its Decision and Order, approving in part and denying in part the Parties' Settlement Agreement on the

---

<sup>29</sup>See KIUC's Responses to Commission Issues Set Forth in Order No. 23941, filed on April 14, 2008, at 12 (the Parties negotiated and agreed-upon the prescribed January 1, 2015 date as a reasonable period of time); and Transcript, at 41 (BluePoint Energy Intervenors' position), 57 (KIUC's position), and 105-108 (Kauai Marriott's discussion); but see Transcript, at 26-27 (payback period of five to six years for Kauai Marriott).

<sup>30</sup>See also Order Regarding Interconnection Tariff, filed on June 26, 2008 (finding that the Interconnection Tariff filed by KIUC on June 18, 2008, incorporated the changes mandated by Decision and Order No. 24238).

standby service issue. Thereafter, by the Order issued herein today, the commission denies the motions seeking the reconsideration of its Decision and Order on standby service.

Having addressed the issues in this investigative proceeding, the commission hereby closes this docket.<sup>31</sup>

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. The motions for reconsideration filed on July 3, 2008, by the BluePoint Energy Intervenors and Kauai Marriott, respectively, are denied.

2. This docket is closed unless ordered otherwise by the commission.

---

<sup>31</sup>The standby service issue has ultimately been addressed in this proceeding by maintaining the monthly standby service charge of \$5.00 per kW for standby demand for all distributed generation customer facilities (excluding renewable energy systems and projects, which are exempt from the \$5.00 monthly charge) until the completion of KIUC's general rate case proceeding. KIUC, as part of its next general rate case application, must submit a proposed revised standby service tariff. Decision and Order, Ordering Paragraph No. 6, at 28. Furthermore, KIUC's proposal must comply with the applicable guidelines and requirements for distribution generation, as set forth in In re Public Util. Comm'n, Docket No. 03-0371, Decision and Order No. 22248, filed on January 27, 2006.

DONE at Honolulu, Hawaii

OCT - 7 2008

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

By Leslie H. Kondo  
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama

Michael Azama  
Commission Counsel

2006-0498.ah

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

RANDALL J. HEE, P.E.  
PRESIDENT AND CHIEF EXECUTIVE OFFICER  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahe'e Street, Suite 1  
Lihue, HI 96766-2000

TIMOTHY BLUME  
MICHAEL YAMANE  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahe'e Street, Suite 1  
Lihue, HI 96766-2000

KENT D. MORIHARA, ESQ.  
KRIS N. NAKAGAWA, ESQ.  
RHONDA L. CHING, ESQ.  
MORIHARA LAU & FONG LLP  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

Counsel for KIUC

WARREN S. BOLLMEIER II  
PRESIDENT  
HAWAII RENEWABLE ENERGY ALLIANCE  
46-040 Konane Place, #3816  
Kaneohe, HI 96744

Certificate of Service

Page 2

GLENN SATO, ENERGY COORDINATOR  
OFFICE OF ECONOMIC DEVELOPMENT  
COUNTY OF KAUAI  
4444 Rice Street, Suite 220  
Lihue, HI 96766

CHRISTIANE L. NAKA-TRESLER, ESQ.  
JAMES K. TAGUPA, ESQ.  
OFFICE OF THE COUNTY ATTORNEY  
COUNTY OF KAUAI  
4444 Rice Street, Suite 220  
Lihue, HI 96766-1300

Counsel for the COUNTY OF KAUAI

RENE MCWADE  
HAWAII HEALTH SYSTEMS CORPORATION  
3675 Kilauea Avenue  
Honolulu, HI 96816

WILLIAM W. MILKS, ESQ.  
LAW OFFICE OF WILLIAM W. MILKS  
American Savings Bank Tower  
Suite 977, 1001 Bishop Street  
Honolulu, HI 96813

Counsel for CHAPEAU, INC., dba BLUEPOINT ENERGY; STARWOOD  
HOTELS AND RESORTS WORLDWIDE, INC.; and HAWAII HEALTH  
SYSTEMS CORPORATION

BEN DAVIDIAN, ESQ.  
LAW OFFICES OF BEN DAVIDIAN  
P. O. Box 2642  
Fair Oaks, CA 95628

Counsel for CHAPEAU, INC., dba BLUEPOINT ENERGY; STARWOOD  
HOTELS AND RESORTS WORLDWIDE, INC.; and HAWAII HEALTH  
SYSTEMS CORPORATION

Certificate of Service  
Page 3

JOE ROBILLARD  
DIRECTOR OF ENGINEERING  
KAUAI MARRIOTT RESORT & BEACH CLUB  
3610 Rice Street  
Lihue, HI 96766

THOMAS C. GORAK, ESQ.  
GORAK & BAY, L.L.C.  
1161 Ikena Circle  
Honolulu, HI 96821

Counsel for MARRIOTT HOTEL SERVICES, INC., on behalf of  
KAUAI MARRIOTT RESORT & BEACH CLUB